

Hardman, H. (2020) In the name of parliamentary sovereignty: conflict between the UK Government and the courts over judicial deference in the case of prisoner voting rights. *British Politics*, 15(2), pp. 226-250. (doi: [10.1057/s41293-019-00110-x](https://doi.org/10.1057/s41293-019-00110-x)).

This is the author's final accepted version.

There may be differences between this version and the published version. You are advised to consult the publisher's version if you wish to cite from it.

<http://eprints.gla.ac.uk/177927/>

Deposited on: 16 January 2020

In the name of parliamentary sovereignty:
Conflict between the UK Government and the courts over judicial deference in
the case of prisoner voting rights

Helen Hardman¹

Abstract

New archival evidence reveals how UK governments, since the 1970s, have been concerned primarily with domestic courts encroaching on *executive* powers rather than those of the legislature. Alongside the Human Rights Act 1998, a mechanism of judicial ‘deference’ to Parliament evolved to justify courts deferring to an act of Parliament, or to decisions of the legislature, or executive. As this paper argues, failure to clarify which of these three is at play has served as a helpful vehicle for Governments to convey the powerful narrative of courts using human rights frameworks to usurp the democratic powers of Parliament as *legislature* at times of conflict between the courts and the *executive*. In the prisoner voting debate, actors thus successfully invoked ‘parliamentary sovereignty’ to generate an emotive narrative that the European Court of Human Rights was usurping the powers of ‘Parliament’ when instead the Court, supported by the UK legal community, was challenging the dangerous precedent set by the UK Divisional Court’s deference, in 2001, to the *executive*. Interview data demonstrates how the 2011 backbench parliamentary debate to flout Strasbourg’s judgments was largely manufactured to curtail the ECHR mechanism which empowers domestic courts to effectively hold the government to account.

Introduction

Much scholarly debate has focused on why the European Court’s prisoner voting judgments, *Hirst No.2* (2004) and then *Greens and M.T.* (2010), resulted in unwarranted conflict between the UK Parliament, Government and the Strasbourg Court. These accounts have variously explained how the judgments have been misinterpreted or mischievously misrepresented (Bates, 2014; Ziegler, 2015; Mead, 2015; Bryan, 2013; McNulty, Watson and Philo, 2014) and why they were considered to be controversial (Lewis, 2006; Murray, 2011, 2013; Foster, 2009; Briant, 2011; Dzehtsiarou, 2017). The present paper arose from a research project into how states comply with the European Convention on Human Rights

(ECHR) in the area of elections.² The paper focuses exclusively on the narrative generated at the 2011 backbench debate: that the European Court directly challenged ‘the sovereignty of parliament’ in questioning whether the legislature had ever considered enfranchising prisoners. The overwhelming support of MPs at the 2011 backbench debate in favour of the motion to flout Strasbourg’s prisoner voting judgments was presented as conclusive evidence to the Council of Europe’s Committee of Ministers that Parliament had debated the issue democratically in accordance with the Court’s requirements and concluded that the law should not be substantively changed (Secretariat, 2011a). Yet interviewees have attested that the 2011 backbench debate and its outcome were largely manufactured, and done so to secure parliamentary support for Government policy, as this paper demonstrates. One explanation offered by an important stakeholder at interview has been overlooked: that the UK Government chose strategically not to implement the judgment in 2010 because it served as a way to whip up parliamentary and public support against rights-based judgments and human rights frameworks at the domestic level, which curtail the Government’s freedom to act. So, although ostensibly geared towards challenging the Strasbourg Court’s decisions, the strategic importance for the Conservatives in Government³ since 2010 in achieving this high-profile display against Strasbourg was to challenge the rights-based frameworks that have empowered the domestic judiciary and pose a threat to executive power.

The paper firstly presents new evidence from archival documents which attest a long-held concern that the ECHR, once incorporated into UK law, would empower the domestic courts at the expense of the Government. Research conducted at the UK National Archives in Kew from 2015-2016 entailed consultation of around 300 declassified Government documents dating from 1952-1995, identified through catalogue keyword searches of ‘ECHR’, ‘human rights’, ‘judicial review’ and ‘parliamentary sovereignty’. Data was collected from documents of the Foreign and Commonwealth Office, Home Office, the Prime Minister’s Office and the Treasury.

The second section of the paper reviews how the UK courts’ mechanism of judicial deference developed around the Human Rights Act (HRA) and how legal scholars had identified faulty legal reasoning in the UK Divisional Court’s decision to defer to Parliament in 2001 over the issue of prisoner voting before Mr Hirst appealed this at Strasbourg. The UK

legal community's concern that this was a misuse of deference was then echoed in the European Court's 2004 judgment.

The third section considers how the Labour Government responded to the Strasbourg judgments and how the Conservatives in opposition politicised the issue. Following the general election of 2010 and Strasbourg's pilot judgment *Greens and M.T.* on prisoner voting, a bipartisan Conservative-Labour initiative to secure a vocal rejection by parliament of Strasbourg's prisoner voting judgments was achieved in 2011, as discussed in the fourth section with reference to interview data. Interview participants comprised current and former parliamentarians, former judges, members of the Secretariat of the Council of Europe, former members of the Parliamentary Assembly of the Council of Europe and other stakeholders. Participants were selected through purposive sampling as those best-placed to offer insight into internal decision-making processes.

The final sections provide evidence demonstrating broad support in Parliament and the UK courts for enfranchising some prisoners. Yet ultimately, in November 2017, the Government supplied the Committee of Ministers with an 'administrative package' (Secretariat, 2017), which falls very short of the scope of enfranchisement that was broadly endorsed in parliamentary consultations between 2006 and 2013 and as widely practiced elsewhere in Europe.

1. Executive fears of the empowerment of UK domestic courts through the ECHR

The domestic judiciary has increasingly acted as an effective check on the 'elective dictatorship'⁴ in the UK since the 1970s, which has not been a welcome development to either Labour or Conservative governments. Under pressure from increasing domestic judicial review and the growing number of judgments from the European Court, governments periodically considered incorporating the ECHR into UK law. The alternative course of action which Conservative Governments considered on two occasions was to suspend the right to individual petition as the channel which brought these human rights violations to light within the ECHR framework. When this option was no longer available, after 1994, there was no alternative for the Government but to incorporate the ECHR, and the HRA was crafted to preserve 'parliamentary sovereignty' as the next section outlines. As discussions and

correspondence among ministers demonstrate, successive governments since the 1970s rejected incorporation primarily because of concerns that the courts would encroach on executive powers rather than those of the legislature.

Under the Labour Government, incorporation, proposed by the Liberal Lord Wade in 1977 and 1979 was supported by the Home Secretary and other cabinet ministers as a way to ‘wash dirty linen at home rather than abroad.’⁵ Yet it was also interpreted by some Labour politicians at the time as a means for the traditionally right-wing conservative judiciary to encroach on left-wing politics (Oliver, 2013: 240), in that it ‘would encourage the courts to impede radical action by Labour governments.’⁶ As the Attorney General pointed out, European Court judgments against the UK reflected the inadequacy of the way in which individual rights were protected but that full ‘entrenchment...would remove a democratic safeguard against the possibility of an excessively anti-executive approach by the courts.’⁷ The Home Office working group on the issue predicted that ‘the consequences would not be confined to the sphere of human rights’⁸ While others argued that ‘whatever we do the courts will be more interventionist’ because of the experience of membership to the European Community and the process of devolution within the UK. ‘It will be very difficult to control this, certainly by Governments with small parliamentary majorities.’⁹ The main concern, therefore, appears to have been the constraints that the UK courts could put on the *executive*, rather than concerns about power being taken from the parliament per se: ‘the courts would always be prejudiced against a radical Government.’¹⁰ Despite this, the Home Office requested the Government spokesman emphasise, when justifying to the public why it had decided to shelve the incorporation of the ECHR in 1977, that such a step would empower the courts at the expense of *Parliament*, granting judges the power to make political decisions.¹¹

Similar concerns were expressed by the Conservative Government of 1979-1983. By the 1980s the judiciary had become more interventionist, which prompted ministers’ concerns at the ‘expanding scope of judicial review and the difficulties faced by decision-makers in some areas in predicting how the courts will react.’¹² As the Home Secretary expressed to the Prime Minister: ‘The mischief lies in the impact of judicial review cases on proper decision-taking by the executive.’¹³ The Government sought ‘some curtailment of judicial

intervention... since it is bound to create increasing problems for the implementation of government policies.’¹⁴

By 1985 the UK had been identified as the state with the largest number of violations of the ECHR¹⁵ and the law officers advised the Prime Minister that this was mainly because the UK had not incorporated the ECHR into domestic law.¹⁶ In 1985 and 1990 the Conservative Government explored alternative measures and considered not renewing the optional clauses of the ECHR: the right to individual petition and the compulsory jurisdiction of the Court which had given rise to the volume of European Court judgments and made these binding under international law. Yet politically, there was no real alternative but to renew these in 1985¹⁷ and in 1990, the decision was justified more explicitly with reference to the UK Government’s refusal to ratify the optional protocol of 1976 to the 1966 UN International Covenant on Civil and Political Rights (ICCPR) which provided the equivalent right to individual petition within the UN human rights framework and which the UK Government was under increasing pressure to ratify. Failure to renew Articles 25 and 46 to the ECHR would make ‘untenable’ the UK’s stance that ratification of the ICCPR protocol was unnecessary.¹⁸ As the lesser of two evils, the UK Government opted for the right to individual petition at the European level instead. Moreover, by 1990 former Communist regimes of Central and Eastern Europe had begun applying for Council of Europe membership and all other Council of Europe members had renewed Articles 25 and 46.¹⁹ ‘The possibility that Eastern European countries might eventually become part of the Convention machinery would increase the pressures on the United Kingdom in this area’ and so the Home Office considered arguments in favour of renewal to be ‘overwhelming.’²⁰ Ultimately, the option of not renewing these provisions was no longer viable for any member state in 1994 when Protocol 11 to the ECHR opened for signature (Drzemczewski, 1999: 224) because when it came into force in 1998, both the right to individual petition and compulsory jurisdiction of the Court became mandatory for all member states (Miller, 1998).

Thus by the time that the Labour Party adopted the HRA as mainstream policy in their 1996 election manifesto, incorporation of the Convention had become almost inevitable for any Government (McQuigg, 2014: 43). Incorporation was not widely supported in the Labour Party (Klug, 2012: 34) and was strategically geared towards securing Liberal Democrat support in the event that Labour failed to secure a majority at the 1997 general election

(McLean, 2009: 207). So, although the Labour governments of 1997-2010 then took measures to strengthen the human rights framework through the HRA, the Constitutional Reform Act (CRA) 2005 and the establishment of the Supreme Court, this step was 'surprising' given that Labour had always been wary of granting judges powers to intervene in political decision-making (Oliver, 2013: 252; Ewing, 1999: 80; McQuigg, 2014: 40-41; Klug, 2012: 34). Once enacted in 1998, the focus of debate surrounding the HRA remained fixed on the question of how far the judiciary should be involved in political decision-making.

2. The courts' deference and parliamentary sovereignty under the HRA

Most of this debate has unhelpfully revolved around 'parliamentary sovereignty' and the notion of courts' deference to Parliament which generally equates with 'deference to legislation' (Klug, 2003: 2) because 'given the confusing nature of the (unwritten) British Constitution the executive and legislature are mostly impossible to disentangle' (Klug, 2003: 2). Whilst Parliament itself is not sovereign, Acts of Parliament made jointly by the executive and legislature are sovereign (Tomkins, 2009: 246). The following brief summary offers some of the salient points from these debates to contextualise the argument.

All scholars generally concede that the HRA has strengthened the role of the courts in political decision-making, but they explain that it does so by involving all three branches of power in this process, thus increasing the accountability of both the executive and legislature (Woodhouse, 2002; Masterman, 2009; Young, 2009: 26) while preventing the rise of 'omnipotent courts' (Nicol, 2002: 439). Parliamentary sovereignty is explicitly retained in the HRA because it does not provide judges with the power to strike down legislation but instead to declare an incompatibility between UK law and the ECHR (Harris, O'Boyle and Warbrick, 2014: 27). So, ultimately it is for Parliament or the Government²¹ to decide whether they consequently amend the law, hence maintaining, in principle, the classic nineteenth century Diceyan account of the supremacy of Parliament (Elliott, 2007: 220-1). Yet, since the 1990s, this Diceyan model has been broadly considered to be outmoded (Dickson, 2007: 371-79; McLean, 2009: 27) and even a 'fantasy ... founded on deceit' (Gearty, 2015).²² As early as the 1970s, there was an understanding in government circles that parliamentary sovereignty

was largely a myth: ‘it is idle to pretend that the UK as a nation or Parliament as an institution possesses unfettered sovereignty.’²³

The original purpose of articulating, constitutionally, that the executive obey the Parliament through the principle of ‘parliamentary sovereignty’ was to emphasise the supremacy of Parliament and the limits of the monarchy’s discretionary powers over the prime minister and his Government: it was not intended to convey that the elected representative branches of the state were not subject to the law or the judiciary (Vile, 1998: 155). Thus, some consider the principle of parliamentary sovereignty to be a judicial construct of the common law to protect the elected representative branches of power from interference by the *monarch* and that judges could choose the ‘nuclear option’ and assert the rule of law over parliamentary supremacy in the event of exceptional circumstances, such as Parliament attempting to abolish judicial review (Elliott, 2007: 233-34; Bogdanor, 2009: 158-60; Street, 2013). Hence, as a theoretical construct, the Diceyan notion that Parliament may pass whatever legislation it chooses, even if that legislation is unconstitutional, appears to be a fundamental misreading of the principle (Vile, 1998: 155).

At the same time, the boundaries between the remit of the elected branches of power and the judiciary have been preserved by a series of conventions and informal understandings (Judge, 2004: 692) and the informal nature of these constraints has left the UK judiciary unable to challenge the power balance *status quo* directly in the form of open, public dialogue (Nicol, 2006). This lack of clarity has therefore led to disagreement over the de facto powers of the domestic courts, with some arguing that the HRA and judicial review constituted ‘an unprecedented transfer of political power from the executive and legislature to the judiciary’ (Judge, 2004: 693) while others have considered it insufficient to prevent the executive’s violation of fundamental rights (Byrne and Weir, 2004: 454). The fuzzy nature of the domestic courts’ remit in this field has been compounded by the growth of the doctrine, which accompanied the HRA, of ‘due deference’: the principle that domestic courts should defer to the legislature or executive to decide rights-based issues in certain instances (Edwards, 2002: 860-862). Some argue that the legal community should never have conceded to this development (Feldman, 2015: 110).

Strictly speaking, ‘deference’ is already built into the HRA, in that it directly requires that the courts defer to the representative branches *after* they have reviewed the issue in question, and in the event that an incompatibility with Convention rights is declared, then it is up to the Government and Parliament to decide whether or not they will act on the judges’ finding. Thus some consider that any extra level of deference, afforded by the courts to the Parliament or Government, to be unnecessary (Gearty, 2004: 59; Klug, 2003), or instead an indication that judges have essentially disagreed with Parliament, but find it ‘politically inexpedient’ to find an incompatibility, and so ‘they will not so much defer as pretend that they think that [Parliament] was correct’ (Dyzenhaus, 2015: 444).

This grey area has therefore led to many instances, especially in the early years of the HRA, when the UK courts were too deferential to Parliament in their decisions (Edwards, 2002). One very notable instance when the degree of deference was particularly ‘inappropriate’ (Lardy, 2002: 525; Edwards, 2002: 861) and ‘disappointing’ (Foster, 2001: 174) was that of the UK Divisional Court’s judgment in 2001 on prisoner voting rights, which included John Hirst’s application (Lewis, 2006: 211).

The Divisional Court noted the ‘apparent anomaly’ in the aim pursued for post-tariff prisoners in custody (*Pearson, Martinez and Hirst*, para 41) and more generally, the proportionality of the ban (para 40), which implicitly suggested this to be in breach of the ECHR. But, Lord Justice Kennedy nonetheless deferred to Parliament in deciding whether prisoners should be enfranchised and dismissed the applicants’ claims (*Hirst No.2*, paras 13-14). Thus he failed to either justify the blanket ban for prisoners or declare an incompatibility with the Convention (Gearty, 2004: 58-59; Klug, 2003: 131). So, when Mr Hirst appealed this decision at Strasbourg, the European Court was ‘unlucky’ to be placed in the position of deciding the case in light of the faulty Divisional Court judgment (Gearty, 2015: 3). The European Court decided that the blanket ban, as articulated in the Representation of the People’s Act (RPA) 1983, was disproportionate (*Hirst No.2 [GC]*, paras 48-50) and contested Lord Justice Kennedy’s assertion that the matter had been debated in Parliament (*Hirst No.2 [GC]*, para 51). Thus some scholars consider the Strasbourg judgments resulted from a failure on the part of the UK courts to intervene where appropriate to evaluate the quality of legislative debate on the issue (Lazarus and Simonsen, 2015: 388) or for being overly deferential to the legislature’s decision (Lewis, 2006: 211), while others have interpreted the

judgments as the European Court primarily criticising the UK Parliament for failing to protect human rights (Murray, 2013: 523).

Instead, this paper proposes that the Strasbourg Court's *Hirst No.2* judgment implicitly challenged the UK courts' recourse to defer to the *executive* rather than the legislature under the HRA in this instance. Moreover, the judgment was issued at a point when relations between the UK courts and the Government had deteriorated to the level of 'historically poor' just after the Government had unsuccessfully tried between 2001 and 2003 to 'get rid of judicial review' because the UK courts had challenged a considerable number of Home Office asylum and immigration cases, which nearly ended in 'constitutional crisis' (Le Sueur, 2004). As Richard Edwards (2002) argued, before the Strasbourg Court issued the *Hirst No.2* judgment, Lord Justice Kennedy had firstly deferred to the existing ban in the RPA 1983 that stemmed from and simply replicated the ban in the 1870 Forfeiture Act. Nor did this take into account the fact that between 1949 and 1969 prisoners serving sentences of less than a year in England, Wales and Northern Ireland and almost all prisoners in Scotland were eligible to vote (Murray 2013: 519-520; 2013b) with the exception of those convicted for electoral offences or those imprisoned for more than 12 months for *treason*.²⁴ Because the Forfeiture Act predated the HRA by more than 100 years and the purpose of the ban had clearly changed since then, such deference was 'highly tenuous to say the least' (Edwards, 2002: 862). The second and more substantive level of deference by the Divisional Court was to the Government minister's judgement on the issue as expressed in Parliament during the passing of the 2000 law to amend the 1983 RPA (Lardy, 2002: 540-41).

When the minister, George Howarth²⁵, informed Parliament that the ban was to be retained, a Conservative MP questioned whether the European Court would consider this compatible with the ECHR (HC Deb 12.1.2000 Cols 342-3). A few months earlier, some members of a Home Office Select Committee had advocated prisoner voting and asked Howarth if his Working Group was considering this, but he declared that it was not (Select Committee, 10.9.1998). Yet Howarth's response when he presented the Act to Parliament in 2000, with a statement of compatibility from the Home Secretary, Jack Straw, (*Hirst No.2*, para 19), was that the issue had been 'deliberated on and considered appropriately' (HC Deb 12.1.2000 Cols 342-3). Since the aim of the ban, as declared by the Government to justify its retention in 2000, must have differed from its original purpose in 1870 (Edwards, 2002: 862),

in effect, therefore, the Divisional Court was deferring to the Government's wishes, as informed by a multi-party speaker's conference in 1968 (*Pearson, Martinez and Hirst*, para 7) and Howarth's Working Group (para 40). But as law scholars noted before the Strasbourg judgment, the 'careful evaluation' of the matter by the legislature which Lord Justice Kennedy claimed to have taken place (*Pearson, Martinez and Hirst*, para 20) was not evident (Lardy, 2002: 540-541; Edwards, 2002: 862), as the Strasbourg Court later reiterated in its 2004 judgment *Hirst No.2*.

...the Court does not consider that a Contracting State may...justify restrictions on the right to vote which have not been the subject of considered debate in the legislature and which derive, essentially, from unquestioning and passive adherence to a historic tradition (*Hirst No.2*, para 41). ... there is no evidence that the legislature in the United Kingdom has ever sought to weigh the competing interests or to assess the proportionality of the ban as it affects convicted prisoners (para 51).

The Strasbourg judgment thus challenged the Divisional Court's undue deference to the executive in this respect and the reasoning of the judgment reflected arguments proposed by UK law scholars and some parliamentarians as well as a range of NGOs. Thus as one stakeholder pointed out, while much of the hostility towards the prisoner voting judgments has been couched in the language of European judges overriding parliamentary will, it is really the threat to *executive will* that exercises the Government (Interview 2). The Strasbourg judgments on prisoners voting rights plugged directly into the hostility shared by both Conservative and Labour parties, while in Government, towards the notion that human rights set proper boundaries on executive power, especially in the area of criminal justice (Interview 2).

3. The UK Government's response to the prisoner voting rights judgments

The Labour Government appealed the judgment of *Hirst No.2* and at the Grand Chamber hearing in 2005, the Prison Reform Trust and the AIRE Centre each intervened as third parties to argue in favour of the enfranchisement of prisoners (*Hirst No.2 [GC]*, paras 53-54), which also signalled to the European Court substantial NGO support in the UK for lifting the ban. The Court pointed out the ambiguity of the UK Divisional Court's judgment insofar as it declared the matter was an issue for Parliament to decide and so did not evaluate the proportionality of the ban, yet had presented compelling evidence with reference to the

analogous Canadian case of *Sauvé* that the ban might not be considered proportionate (*Hirst No.2 [GC]* para 80). Thus the Grand Chamber affirmed the 2004 Chamber decision in finding a violation of the right to free and fair elections (Article 3 of Protocol 1). Following their unsuccessful appeal, the Government quickly set up a timetable to introduce the necessary legislative amendments, which suggests that there was certainly some Government will for implementation at that time, which was confirmed by a two-thirds majority vote in Parliament when the issue was raised at a commons debate on the 2006 Electoral Administration Act. At this debate, the Conservatives brought up the *Hirst No.2* judgment and insisted on tabling a new clause in the act re-stating the blanket ban on voting for prisoners. The motion was defeated by 375 votes to 170 (HC Deb 11.1.2006 Cols 382-383) demonstrating considerable parliamentary support for lifting the blanket ban. But this also set a precedent among the Conservatives for a policy to re-state the blanket ban.

In 2007, the Government acknowledged the ban to be a violation of the ECHR which was in turn confirmed by the Scottish Court of Session in the judgment of *Smith v Scott* (paras 8-9). By inference, therefore, the UK Government had admitted there to be an incompatibility with the HRA (Interview Easton; Interview 4). The Court of Session made a declaration of incompatibility with the HRA (*Smith v Scott*, para 56), and justified its authority to issue this under the Scotland Act (*Smith v Scott*, paras 34-37) (Interview 4). Because of these developments, stakeholders believed at the time that legislative amendments were in the pipeline (Interview Easton; Interview Kelly). Thus any strong objection, on the part of the Labour Government, to implementing the judgment was certainly not apparent. In April 2009, the Government launched the second consultation on the issue. The Conservatives objected and Dominic Grieve, as Shadow Secretary of State for Justice, announced to the press that the Government should provide an opportunity for Parliament to debate the issue and re-state the ban (Winnett and Whitehead, 2009).

After the change in Government to a Conservative-Liberal Democrat coalition, the European Court's *Greens and M.T.* judgment in November 2010 reiterated the decision in *Hirst No.2*. The Court noted that the new Government and Prime Minister had publicly acknowledged that this amounted to a violation (*Greens and M.T.*, para 74) and had declared in November 2010 a legal obligation to amend the law (*Greens and M.T.*, paras 42-43). Moreover, Parliament's Joint Committee on Human Rights (JCHR), and the Equality and

Human Rights Commission had each expressed concern at the Government's delay in implementing the *Hirst* judgment (*Greens and M.T.*, para 75). Thus the evidence presented to the European Court suggested both willingness on the part of the UK Government and eagerness from Parliament to implement the *Hirst* judgment. In light of the large number of similar UK cases, the Court issued a pilot judgment (freezing all analogous cases and requiring more concrete remedial action by the UK Government) but did not award any financial compensation to the applicants (*Greens and M.T.*, para 118). This was viewed by the legal representative for the applicants as derisory and a soft option which essentially let the UK Government off the hook (Interview Kelly). Similarly, the prevailing understanding at the Strasbourg Court, and more widely at the Council of Europe, was that the judgment was constructive and generous to the UK Government (Interview 1).

The new Government's willingness to comply was also apparent in a statement issued to Parliament in December 2010, which announced that prisoners serving a sentence of less than 4 years were to be given the vote through a forthcoming amendment to the RPA (HC Deb 20.12.2010 Cols 150WS-151WS). Yet in response a small group led by the Conservative MP Philip Hollobone held a Westminster Hall debate on the morning of 11 January 2011 to oppose the amendment. Hollobone began by agreeing with the Prime Minister's view, that the idea of prisoners voting made him feel sick, and that he supported the Attorney General, Dominic Grieve, who had advocated in 2009, that there be a parliamentary debate to allow MPs the opportunity to insist on retaining the blanket ban (HC Deb 11.1.2011, Cols 1-2WH). A variety of opinions were expressed and the tone of the debate was relatively moderate; as a Westminster Hall debate, the meeting was small and some present advocated another debate in opposition to prisoner enfranchisement, in the context of parliamentary sovereignty, which subsequently took place in the form of the 10 February 2011 backbench debate on the issue.

Within a month the issue had suddenly blown out of all proportion. In Strasbourg, this reaction was unprecedented as the community at the Council of Europe did not expect the judgment would provoke such a response from the UK Government (Interview 1). Similarly, the Lord Chancellor and Justice Secretary, Kenneth Clarke, declared the day before the scheduled backbench debate that the Strasbourg judgment had hitherto never been considered controversial, and reiterated that the judgment would be implemented (Clarke, 2011). Since then, 'the issue has been played out against a political and to some extent popular backlash

against the Convention system' (Jacobs, White and Ovey, 2014: 62), beginning with the theatrical parliamentary debate in 2011.

4. The Parliamentary backbench debate

The backbench debate on the issue in February 2011 was designed, according to Jack Straw, to strengthen the hand of the Government in reporting back to Strasbourg that Parliament had met the Court's requirements by holding a substantive debate on the issue but that Parliament had refused to change the law, thus making implementation of the judgments 'difficult or impossible.' (HC Deb 10.2.2011 Col 504). The Prime Minister and other members of Government had already 'quietly given a green light' to the proponents because a rejection by Parliament would be 'helpful' (Daily Mail, 2011).

The motion to flout the original Strasbourg judgment in *Hirst No.2* (2004) was unusual in that it was bipartisan, brought by David Davis as the senior Conservative MP and Jack Straw as the senior Labour MP 'united in their hostility to the European Court of Human Rights' (Interview MacShane). Jack Straw had been directly challenged by John Hirst on this issue as Home Secretary at the time of the original Divisional Court judgment in 2001 and then again in 2004 as Foreign Secretary and thus the UK Government's representative to the Council of Europe's Committee of Ministers. From 2007, as Secretary of State for Justice, he claimed that he had objected to the European Court telling 'elected national parliaments what they could and could not do' (Straw, 2012: 538)

The premise on which he based his decision was that the European Court had ruled differently to the UK divisional court which had 'declared the long-standing ban ...was compatible with Convention rights under the [Human Rights] Act' (Straw, 2012: 285). Yet, as others have pointed out, Lord Justice Kennedy had *not* explicitly declared the ban to be compatible with the Convention but had simply deferred to Parliament in 'refusing to find any human rights violation' (Gearty, 2015: 4-5). Nor had Lord Justice Kennedy sought to evaluate the proportionality of the ban, although in his judgment he presented compelling evidence that the ban could be considered disproportionate (*Hirst No.2 [GC]* para 80). Moreover, as later discussed in this paper, the public consultation of 2006 was not 'inconclusive' as Straw suggested, but instead demonstrated overall majority support for

enfranchising some prisoners, while the results of the 2009 consultation were never published.

Using the device of the free vote through the backbench debate procedure gave the impression of freedom yet allowed the strong proponents of the motion to bring greater pressure to bear on the outcome which ‘nailed the attention’ on each MP’s individual decision on the issue, so that MPs could not say that they had been told to vote in a particular way by their party (Interview Williams). At the same time, it was quite clear what the views of the two senior Conservative and Labour proponents and the Prime Minister were. And although both Straw and Davis were parliamentary backbenchers at this time, arguably each represented their respective parties in their previous *executive* roles. The Attorney General, Dominic Grieve, at the outset of his speech warned that although Conservative backbench turnout was very healthy, ‘the Opposition Benches seem to be, with a number of notable and eminent exceptions, rather bare. That might be a problem later in terms of the impact that this debate may have’ (HC Deb 10.2.2011 Col 510). The debate was dominated by Conservative backbenchers who delivered two-thirds of the speeches and made most of the ad hoc interventions²⁶ and was viewed as, ‘the Government trying to get Parliament to provide backing for Government policy’ (Interview Bottomley)

In the context of the perceived tide of public opinion as reflected in the popular press, giving a free vote on the issue essentially ensured that MPs voted the way the Government wanted without the Government appearing ‘oppressive in any sense’ (Interview Williams). Yet this alleged tide of public opinion was not reflected in letters from constituents, as MPs at interview claimed that they received little if any correspondence about the issue and so concluded it was not of much relevance to the public. The way in which the motion was brought strengthened the position of the proponents of the motion because it helped to construe the image of both ‘wicked prisoners and wicked Europeans at a time of anti-European hysteria’ (Interview Williams) as a way to attack the European Court (Interview MacShane; Interview 3). Moreover, it was counterproductive in that it conflated the Strasbourg Court and Convention system with the principle of prisoner voting (Interview Bottomley) resulting in a ‘perfect storm’ (Murray, 2013) The conditions under which the debate took place resulted in only 22 votes against the motion to flout the Strasbourg judgment and 234 in favour. MPs were not surprised at this, and as one explained there was a

‘campaign’ beforehand during which MPs committed to vote in favour of the motion irrespective of the arguments proposed during the debate (Interview Bottomley). The reason why so few MPs were against the motion was ‘because they either hadn’t thought about it, or they weren’t interested or they didn’t dare’ (Interview Bottomley).

Others suggested that scheduling the debate on a Thursday afternoon, the day of the week when MPs would be returning to their constituencies, depressed turnout especially among those travelling further from Westminster. The overall turnout was 54%. Since Conservative backbench constituencies were located, on average, much closer to Westminster²⁷ this may have facilitated greater Conservative turnout, which was 72%.²⁸ Turnout for Labour and Liberal Democrat backbenchers was considerably lower at 37%²⁹ and 34%³⁰ respectively. Yet distance did not altogether explain turnout³¹ nor was turnout consistently higher from those regions closer to Westminster.³²

What may have brought considerable pressure to bear on how some MPs voted was that these events were significantly overshadowed by the prosecution and conviction of MPs in the wake of the expenses scandal. Both news stories of prisoner voting and the expenses scandal were covered in the mainstream media around the January and February debates of 2011 and although these stories were almost invariably covered as separate items they frequently appeared in the same newspaper issues or broadcasts.

The issues had been briefly linked in parliamentary debate on 2 November 2010 in the question of whether prisoners would be allowed to vote at the forthcoming Alternative Vote referendum. The Deputy Prime Minister replied that rectifying fundamental injustices in how people elect their MPs promised to undo the damage of the parliamentary expenses scandal (HC Deb 2.11.10 Col 862). But the public had more clearly linked the two stories in social media tweets, joking about whether MPs in prison would get the vote. Similar tweets³³ were posted in response to the BBC television programme *Question Time*³⁴ on 4 November 2010 following that evening’s episode which featured the issue of prisoner voting discussed by a panel including Jack Straw and David Davis (Mentornmedia, 2011).

A few days later, the UK Supreme Court ruled out the use of parliamentary privilege for the first MPs to be prosecuted in *R v Chaytor and others* (10 November 2010) which attracted

media coverage around the same time that the European Court issued the *Greens and M.T.* judgment. The first to be sentenced to prison was the Labour MP David Chaytor on 7 January 2011. The next was the Labour MP Eric Illsley who was convicted on the morning of the Westminster Hall debate about the issue of prisoner voting on 11 January and who was then sentenced on the day of the subsequent backbench debate, 10 February. The Labour MP Jim Devine was also additionally convicted on the morning of 10 February and news items were posted on the Conservative Party home page to announce these developments at 12.15, just 5 minutes before the debate began, and at 4.45 pm towards the end of the debate.³⁵ Although these events could be considered coincidental, the probability that these particular hearings would take place on both of these days is extremely low,³⁶ which could suggest that they were purposely timed to coincide.³⁷

Backbench MPs had expressed concern that the system of investigation and prosecution was neither systematic nor fair (HC Deb 2.12.2010 Cols 1001-1005) and some felt that decisions to prosecute were relatively arbitrary, which gave the impression that party leaderships were selecting scapegoats to satisfy public outrage (Hattenstone, 2012). If malpractices in claiming expenses had been encouraged and institutionalised since the 1960s to compensate for the Government's failure to raise parliamentarians' salaries (MacShane, 2014: 44-48; Hattenstone, 2012) then understandably these practices had come to be viewed as an entitlement long before they emerged in the press as a scandal (Kelso, 2009: 330-32; Allen, 2011: 229-30).

MPs had also expressed frustration that press coverage regarding expenses seemed to be timed to coincide with relevant scheduled debates, suggesting details were being purposely leaked by the authorities tasked within Parliament to investigate MPs' expenses (HC Deb 2.12.2010 Col 1029). The issue of expenses remained prominent in the media and in mid-January fresh police investigations were initiated by 'a disgruntled MP' who supplied evidence that a further 6 unnamed MPs had claimed expenses fraudulently (Carlin, 2011).³⁸ Because some MPs had first learnt from the press that they were under investigation (HC Deb 2.12.2010 Col 1002), this news story may have made some feel vulnerable, regardless of their conduct, and perhaps more inclined, or even under some pressure, to vote in tune with their senior party leaders at the February debate. If so, then Labour backbenchers were more

vulnerable to this pressure because three-quarters of them had been elected before the expenses scandal broke in contrast to only one third of Conservative backbenchers.

The Government ultimately decided when the backbench debate was to be scheduled (BBC News, 18.1.2011) which one stakeholder believed was purposely timed to coincide with the key moments of the expenses trials (Interview 6) as a way to exploit the trauma MPs were experiencing to mobilise support for the motion:

Everyone was treated by the popular press as a criminal or a potential criminal, and certainly I know that a number of MPs' views were influenced by the fact that if they were sympathetic in any way to human rights or voting for prisoners then they'd be targeted by the popular press. And right alongside that was their expenses claims. So, I don't think members of Parliament expressed their real views (Interview 6).

Other MPs may have felt pressure to demonstrate a tough line against criminals, generally, following the media focus on alleged corruption and criminality within Parliament itself,³⁹ while another participant suggested anticipated political advancement explained why some MPs supported the motion (Interview 7).

5. Consultations and parliamentary support for prisoner enfranchisement

The issue of implementing the prisoner voting judgments remained under the supervision of the Committee of Ministers. In 2013 the Government set up a parliamentary select committee to investigate the issue once more and as with the consultation of 2006, the overwhelming majority of respondents expressed the opinion that the ban should be lifted. Yet Government communications failed to indicate the positive nature of the outcome (Secretariat, 2013; 2014). At the 2006 consultation only 25% of all respondents favoured maintaining the ban (Ministry of Justice 2009: 14) while 47% favoured all prisoners being given the vote (Secretariat, 2010a). The outcome to the 2006 consultation was published in 2009 (Horne and White, 2015). But the results of the second stage of the consultation in 2009 were apparently never published (Secretariat, 2010b). The 2013 select committee was tasked with examining a draft bill which provided three options: to maintain the status quo or enfranchise prisoners serving sentences of six months or less, or those sentenced to less than four years (Ministry of Justice, 2012:3). At the outset, the majority of the committee was opposed to amending the law and some were apparently quite intransigent (Interview Jacobs;

Interview Easton). But in conclusion, the select committee recommended that prisoners serving a sentence of 12 months or less should be enfranchised (HL, HC, Joint Committee, 2013)). The fact that many of these individuals changed their minds in the light of evidence presented suggests Parliament, more broadly would be more receptive to changing the law than the backbench debate indicates. Yet, in the wake of the December 2013 inquiry, the Government did not present a bill to Parliament in the form recommended, which indicates little Government concern for parliamentary sovereignty where select committees are specifically tasked to investigate issues on behalf of Parliament and hold the Government to account (Bradley and Ewing, 2011: 210-211; House of Commons, 2015: 3)

Instead, in keeping with Conservative party policy⁴⁰ the Conservative MP Christopher Chope, a previous UK delegate to the Parliamentary Assembly of the Council of Europe (PACE), on two occasions tabled a bill in 2014 and 2015 to restate that convicted prisoners remain ineligible to vote.⁴¹ Although the UK Government emphasised that Chope's bills were not 'Government sponsored' nonetheless they were presented as evidence to the Committee of Ministers of the overwhelming parliamentary hostility to prisoner voting (Secretariat, 2015a). One interviewee expressed the view that until the change in Government in 2010, long-serving Conservative MPs in PACE, such as Mr Chope, had always acted courteously and constructively, yet had suddenly become unhelpful and combative after the *Greens and M.T.* judgment (Interview 5). On both occasions, Chope's bill was prorogued which again suggests Parliament's unwillingness to re-state the ban.

In the next report to the Committee of Ministers, the new UK Minister for Human Rights, Dominic Raab, reiterated that hostility within Parliament was unlikely to change in the foreseeable future and this prevented the Government from lifting the ban (Secretariat, 2016). As the third proponent of the motion to flout Strasbourg judgments at the 2011 backbench debate, Raab had played a prominent role in winding up the debate with his own controversial speech which declared that judgments issued to the UK since 1978 amounted to a 'serious abuse of power' by the Court (HC Deb 10.2.2011 Col 583).

6. The position of the UK courts since 2013

When the issue reappeared before the UK Supreme Court in 2013, in the context of prisoner voting rights at European Parliament elections, the Court acted cautiously and rejected the cases but refused to fundamentally contest the European Court's decision in *Hirst* as the Attorney General requested (Tickell, 2014:291). The Supreme Court thus pre-empted a renewed and potentially more persuasive attempt by the Attorney General to contest the judgments again in Strasbourg (Tickell, 2014: 291). But the Court refused to refer the case under EU law to the CJEU (*Chester and McGeoch*, para 84) which was surprising given the significant proportion of the judgment 'devoted to the hypothetical case under EU law' (Sheridan, 2013). According to one interviewee, the presence of the Attorney General, Dominic Grieve, and other members of Parliament at the hearing was unusual, and this indicated to the Court the political importance of the case (Interview 4).

Government communications to the Committee of Ministers had requested deferral of the deadline for implementation to await the outcome of related prisoner voting judgments in the cases of *Scoppola v Italy (No.3)* (Secretariat, 2011b), in which the Attorney General, Dominic Grieve had intervened unsuccessfully, and then *Thierry Delvigne v Commune de Lesparre-Medoc* (Secretariat, 2015) In October 2015 the issue reappeared, this time before the Luxembourg Court of Justice of the European Union (CJEU) in the *Delvigne* case. Although the CJEU ruling on prisoner voting rights did not find a violation of Thierry Delvigne's right to vote, the judgment confirmed that the right to vote in European Parliament elections was covered under Article 39(2) of the EU Charter, the equivalent right to Article 3 of Protocol 1 of the ECHR (HL EU Committee 2016, paras 103-4). Thus, in the same way that the Strasbourg Court had found UK law to be incompatible with the ECHR in *Hirst No.2*, the CJEU could theoretically find the UK blanket ban on prisoner voting unlawful under the EU Charter of Fundamental Rights (Simpson 2015). Following *Delvigne*, the House of Lords European Union Committee conducted an inquiry between October 2015 and February 2016 into the implications of the repeal of the HRA and withdrawal from the ECHR on the UK's obligations under the EU. The Committee concluded on the basis of expert evidence that the judgment in *Delvigne* would most likely generate more prisoner voting cases analogous to *Chester and McGeoch* (HL EU Committee 2016, para 108) and more generally human rights litigation in national courts under the EU Charter of Fundamental Rights (HL EU Committee 2016, para 80). The report focused in particular on the case of prisoner voting rights in the UK and the Committee suggested that the Supreme Court would

in future refer such cases to the CJEU, resulting in EU litigation (HL EU Committee 2016, paras 108; 112-113). The Committee's suggestion (albeit prior to the 2016 EU referendum) that the UK domestic courts would come to rely on the EU Charter for human rights further demonstrates that it is the action and decisions of *domestic courts* that challenge the political branches of power.

Conclusions

Having failed to secure the approval of the Parliamentary Committee to flout the Strasbourg judgments on prisoner voting in 2013, the Government quickly shifted focus from Strasbourg to the UK judiciary. The Government met with some resistance from the Supreme Court in response to the renewed threats to withdraw the UK from the ECHR: since 2014 the Supreme Court has begun explicitly relying on the use of the common law in rights-based judgments to send a clear signal to the Government that it does not need to invoke the HRA or ECHR to justify such decisions (Knight and Cross; Clayton; Stephenson; Ferreira, 2015). This innovation communicates to the Government that repealing the HRA or withdrawal from the ECHR would not prevent judges making rights-based decisions.

In retaliation, the Government curtailed the powers of UK courts to protect citizens' rights in the areas of access to justice (Interview Jacobs; Rozenberg; McMahon; Hyde; ; Bano; ; Eve, 2015)⁴² and judicial review (HL HC JCHR 2014: 17; 22-27; Travis; Patrick, 2014) through the Criminal Justice and Courts Act 2015.⁴³ Although this act circumscribed the courts' powers of judicial review, key legal NGOs successfully lobbied Parliament to mitigate some of the chilling effects of the law (BIICL, 2015: foreword). And, in response, the Government shifted its sights to this source of resistance in 2015 to target NGOs as a channel for successful intervention in rights-based cases as achieved, for example, by the AIRE Centre and the Prison Reform Trust in the *Hirst No.2 [GC]* case.⁴⁴ At the 2011 backbench debate on prisoner voting, one MP received considerable support when she urged the Attorney General to look into whether public and charitable funding should continue to be made available to organisations such as the AIRE Centre (HC Deb 10.2.2011 Cols 558-9). The Government subsequently introduced an anti-lobbying clause, designed to prevent charities, NGOs and other public sector grant holders from using public funds to lobby Parliament with advice that challenges Government policy (Interview 4) but after widespread

opposition this was repealed in December 2016 (Weaver and Butler, 2016). Yet, under the Criminal Justice and Courts Act 2015, court charges may now be imposed on such interveners in the UK courts if they ‘behave unreasonably’ or fail to be of ‘significant assistance to the court’ (James, 2015). Because applicants must first exhaust domestic remedies before filing an application at the European Court, NGOs’ capacity to lodge such applications will be hampered if the costs become too prohibitive for them to begin these proceedings at the domestic level. Thus the risk of fines will have a chilling effect on human rights NGOs’ continuing advocacy in the UK (BIICL, 2015: iii-iv).

Returning to the issue of parliamentary sovereignty, since 2016 the UK higher courts became directly embroiled in checking executive powers vis-à-vis the Parliament. The Government’s refusal in 2016 to allow Parliament’s involvement in the process of triggering Article 50 TEU, and the terms by which the UK withdraws from the EU, demonstrates, once again, executive disregard for the powers of the legislature. As the High Court articulated in their 2016 judgment of *Miller and Santos* (which challenged the Government’s constitutional power to trigger Article 50 without consulting Parliament) under the Royal Prerogative, the scope of the executive to act independently of the Parliament is constitutionally limited (*Miller and Santos*, 2016, paras 24-25) and this scope is determined by the courts (Maer and Gay, 2009:3-4). As the Court made clear to the Government, no branch of the executive may, without parliamentary consent, amend or repeal a law (*Miller and Santos*, 2016: para 29) because it ‘cannot without the intervention of Parliament confer rights on individuals or deprive individuals of rights’ (*Miller and Santos*, 2016: para 32; Bradley and Ewing, 2011:254;258-59). Although the Government appealed the judgment, the Supreme Court upheld the High Court’s decision.⁴⁵ Thus, the UK courts have clarified to the Government the limits of executive power in deciding rights-based issues. More importantly, these UK court judgments reiterate the importance of the role of the legislature in this context, as was also emphasised in the Strasbourg judgment *Hirst No 2* (para 51).

Finally, the issue of prisoner voting in the UK was apparently resolved in December 2017 when the Council of Europe accepted the UK Government’s administrative package (Committee of Ministers, 2017) to enfranchise prisoners that have been released on temporary licence, estimated to number around 100 people (HC Deb 21.12.17 Col 1277) of a prison population of 92,500 (Sturge, 2018). Improving conditions in prisons, which are

overcrowded and unsafe (Prisons and Probation Ombudsman, 2018), is likely to be a higher priority for prisoners than securing voting rights. But this outcome is nonetheless disappointing and indicates the Government's disregard for the ECHR mechanism.

What remains less clear, however, is the means by which the outcome of the 2011 backbench debate on prisoner voting was reached. If manufactured, as interviews suggest, then this was a cynical abuse of Parliament's sovereignty by the Government in a way which political scientists might characterise the decision-making processes of authoritarian regimes. In any event, the backbench debate demonstrates both the vital importance of the courts in adjudicating rights-based issues as well as the dangers of judicial deference to Parliament in an 'elective dictatorship.'

8995

Notes

¹ Thanks are owed to the journal editors, two anonymous reviewers and Professor Jane Duckett, University of Glasgow, for their help in revising this article.

² From the author's interviews conducted 2012-2017, forthcoming in H. Hardman, *Complying with the ECHR: the role of public debate in electoral reform*, Cheltenham: Edward Elgar

³ In coalition with the Liberal Democrat Party 2010-2015

⁴ Term used to advocate incorporation of the ECHR into UK law by both Conservatives (Lord Hailsham) and Labour (John Smith) while in opposition in 1978 and 1992 (Klug, 2012:32;34)

⁵ Letter, Anthony Crosland to Prime Minister [August, 1976], PREM 16/1294

⁶ Minute, 21.12.1976 to Prime Minister on Cabinet meeting of 10.6.1976, PREM 16/1294

⁷ Minute, Samuel Silkin to Prime Minister, 13.12.1976, PREM 16/1294

⁸ Report, Working Group on Human Rights, [1976], PREM 16/1294

⁹ Minute, Secretary of State for Trade to Cabinet and Prime Minister, 7.1.1977, FCO 33/3312

¹⁰ Letter, Minister of Defence to Prime Minister, 4.1.1977, FCO 33/3312

¹¹ Home Office memorandum to Cabinet, 21.1.1977, FCO 33/3312

¹² Minute, Law Officers to Prime Minister, 22.7.1987, PREM 19/2295

¹³ Letter, Douglas Hurd to Prime Minister, 6.4.1987, PREM 19/2295

-
- ¹⁴ Letter, Shirley Stagg to Nigel Wicks, 30.3.1987, PREM 19/2295
- ¹⁵ ‘Human Rights’, Home Secretary’s minutes 13.5.1985; 10.7.1985, PREM 19/1756
- ¹⁶ Ibid
- ¹⁷ Letter, Leon Brittan to Geoffrey Howe, 29.7.1985, PREM 19/1756
- ¹⁸ Letter 5.11.1990, HO 273/28
- ¹⁹ Ibid
- ²⁰ Discussion paper, April 1990, HO 273/28.
- ²¹ Under section 10 of the HRA the Government may take remedial action without consulting Parliament, and for example, amend legislation as they consider necessary to remove the incompatibility (HRA, 10(2); Schedule 2(2))
- ²² MJE Fretwell, memorandum to Mr Goulding on the Lord President’s seminar on Parliamentary Sovereignty and the EEC, 17.12.1974, FCO 30/2455
- ²³ MJE Fretwell, 17.12.1974 memorandum to Mr Goulding on the Lord President’s seminar on Parliamentary Sovereignty and the EEC, FCO 30/2455
- ²⁴ Annex 3: Scotland, FCO 41/91 UK implementation of ECHR 1967-1968
- ²⁵ Chairing the Home Office Working Group
- ²⁶ 28/42 speeches and 19/26 interventions by other MPs.
- ²⁷ Conservative: 180 km; Labour: 331 km; Liberal Democrat: 376 km. Distances calculated using https://distancecalculator.globefeed.com/UK_Distance_Calculator.asp
- ²⁸ voting in favour; one MP voting against
- ²⁹ 33% in favour; 4% against.
- ³⁰ 10% in favour; 24% against
- ³¹ The average distance for those that voted: Conservatives: 171 km; Labour: 326 km; Liberal Democrat: 249 km. So, comparing with averages cited in note 29, distance was only significantly less for Liberal Democrats that voted.
- ³² Labour turnout: North East:55%; London:52%; East Midlands:38%; West Midlands:37%; Yorkshire Humber:35%; Scotland:34%; Wales:33%; South West:33%; North West:28%; South East:0% East of England:0%. Conservative turnout: West Midlands:80%; South West:77%; East of England:76%; East Midlands:76%; London:75%; South East:72%; Yorkshire Humber:71%; North West:53%; Wales:50%; North East:50%
- ³³ The search entailed tweets #bbcqt @bbcquestiontime posted on 4.11.2010
- ³⁴ <http://www.bbc.co.uk/programmes/b006t1q9>

³⁵ See: <http://www.conservativehome.com/frontpage/2011/02/newslinks-for-thursday-11th-february-2011.html>

³⁶ Between 7.1.2011 and 23.12.2013 only 5 MPs were convicted and given prison sentences.

³⁷ There was no guarantee the jury at Jim Devine's trial would reach a guilty verdict, nor would do so quickly, but this might have been anticipated because Devine's was reported beforehand as a 'very straightforward' case of false accounting (Davies; PA; Seamark, 2011) and juries generally deliberate less over alleged economic crimes (Meitl, Piquero and Piquero, 2017).

³⁸ 'One ex-Labour Cabinet Minister, two Labour MPs, one Liberal Democrat and two Tories' (Carlin, 2011)

³⁹ Whether the issue of expenses was a factor in how they voted was not raised at interview with serving MPs because of ethical considerations.

⁴⁰ The Conservative Party pledged in a policy document 2014 'Protecting human rights in the UK' to present Strasbourg with an ultimatum that European Court judgments were to be advisory only, amounting to withdrawal from the compulsory jurisdiction of the Court (Article 46), in breach of protocol 11 and ultimately withdrawal from the ECHR. The Conservative Party manifesto (2015:60) declared 'we have stopped prisoners from having the right to vote' and maintained the Government would 'scrap the HRA'.

⁴¹ Private Members' Bill, sponsored by Christopher Chope, *Convicted prisoners voting bill* 2014-2015; 2015-2016

⁴² The Parliament's Justice Committee expressed similar misgivings (HC Justice Committee, 2015) so the Government repealed it. (BBC, 2015)

⁴³ HC Bill 192

⁴⁴ Since 1994 when NGOs and groups of individuals were granted powers to file applications at the European Court, NGOs have acquired a more prominent role in the process of the Court's adjudication which has generated greater human rights advocacy in the UK and elsewhere (Cichowski, 2011).

⁴⁵ requiring an Act of Parliament to trigger Article 50 TEU but no necessary consultation with the devolved assemblies (*Miller and another*)

References

-
- Allen, N (2011) Dishonourable members? Exploring patterns of misconduct in the contemporary House of Commons. *British Politics* 6(2), 210-240.
- Bano, N (2015) Criminal courts charge: 'a spiteful attack on poor people'. *The Justice Gap* 27 March <http://thejusticegap.com/2015/03/a-spiteful-attack-on-poor-people/> (accessed 25 November 2016)
- Bates, E (2014) Analysing the prisoner voting saga and the British challenge to Strasbourg. *Human Rights Law Review* 14, 503-540
- BBC News (2015) *Criminal courts charge to be scrapped by government*. 3 December <http://www.bbc.co.uk/news/uk-politics-34993428> (accessed 25 November 2016)
- BBC News (2011) Jack Straw and David Davis secure prison vote debate. 18 January <https://www.bbc.co.uk/news/uk-politics-12214988> (accessed 20 August 2018)
- BBC News (2011) MPs reject prisoner votes plan. 10 February <http://www.bbc.co.uk/news/uk-politics-12409426> (accessed 31 January 2018)
- BIICL (2015) Bingham Centre for the Rule of Law, Justice, and the Public Law Project *Judicial Review and the rule of law: an introduction to the Criminal Justice and Courts Act 2015, Part 4*. London, October 2015 http://www.biicl.org/documents/767_judicial_review_and_the_rule_of_law_-_final_for_web_19_oct_2015.pdf?showdocument=1 (accessed 25 November 2016)
- Bogdanor, V (2009) *The New British Constitution*. Oxford: Hart Publishers
- Bradley, A and K Ewing (2011) *Constitutional and Administrative Law*, 15th ed. Harlow: Longman
- Briant, S (2011) The requirements of prisoner voting rights: mixed messages from Strasbourg. *The Cambridge Law Journal* 70 (2), 279-282
- Bryan, G (2013) Lions under the Throne: the Constitutional Implications of the Debate on Prisoner Enfranchisement. *Cambridge Journal of International and Comparative Law* (2)2, 274-286
- Byrne, I and Weir, S (2004) Democratic audit: executive democracy in war and peace. *Parliamentary Affairs* 57(2), 453-468.
- Carlin, B (2011) 'Whistleblowing MP shops SIX more colleagues to police over expenses fraud' *Daily Mail* 16.1.2011
- Chapman, J and C Gill (2011) Disgraced MP faces jail and Commons axe after pleading guilty to £14,000 expenses fraud 12.1.2011

-
- Clarke, K (2011) UK will not defy European court on prisoners' votes. *The Guardian*, 9 February. <https://www.theguardian.com/politics/2011/feb/09/government-defy-european-court-vote-prisoners> (accessed 25 November 2016)
- Clayton, R (2015) The Empire strikes back: common law rights and the Human Rights Act. *Public Law* January, 3-12.
- Committee of Ministers (2017) Hirst No.2 group v the United Kingdom (Application No. 74025/01) Supervision of the execution of the European Court's judgments CM/Notes/1302/H46-39, 7.12.2017
- Conservative Party (2014) *Protecting human rights in the UK: The Conservatives' proposals for changing Britain's human rights laws*
- Conservative Party (2015) *The Conservative Party Manifesto: strong leadership; a clear economic plan; a brighter, more secure future*
- Daily Mail (2011) Tory rebels given green light to crush prison votes 19.1.2011
- Daily Mail Comment (2011) The simplest way to keep Europe at bay 19.1.2011
- Davies, C (2011) Ex-Labour MP Jim Devine claimed expenses to clear overdraft, court told *The Guardian*, 2.2.2011
- Dickson, B (2007) Judicial activism in the House of Lords, 1995-2007. In: *Judicial Activism in Common Law Supreme Courts*. Oxford: Oxford University Press, 363-414.
- Drzemczewski, A (1999) The European Human Rights Convention: Protocol No.11, entry into force and first year of application. *Documentação e Direito Comparado* 79/80, 221-247. <http://www.gddc.pt/atividade-editorial/pdfs-publicacoes/7980-a.pdf> (accessed 21 February 2017)
- Dyzenhaus, D (2015) What is a democratic culture of justification. In: Hunt, M, HJ Hooper and P Yowell. *Parliaments and Human Rights: Redressing the Democratic Deficit*, London: Hart Publishing, 425-446.
- Dzehtisarou, K (2017) Prisoner voting saga: reasons for challenges. In: Hardman, H and B Dickson (eds) *Electoral rights in Europe: advances and challenges*, London: Routledge, 92-110
- Edwards, R (2002) Judicial deference under the Human Rights Act. *Modern Law Review* 65, 859-882
- Elias, P (2009) The Rise of the Strasbourg-isation: judicial activism and the ECHR. *Annual Lord Renton Lecture, Statute Law Society*, 24 November.

-
- Elliott, M (2007) The war on terror and the United Kingdom's constitution. *European Journal of Legal Studies*, 1(1), 220-242
- Eve, C (2015) Plymouth people pleading guilty to avoid new £1,200 court bill. *The Plymouth Herald*, 18 April <http://www.plymouthherald.co.uk/Court-cost-rise-Plymouth-defendants-plead-guilty/story-26350489-detail/story.html> (accessed 25 November 2016)
- Ewing, KD (1999) Legislation: the Human Rights Act and Parliamentary Democracy. *Modern Law Review* 62(1), 79-99.
- Feldman, D (2015) Democracy, law, and human rights: politics as challenge and opportunity. In: Hunt, M, HJ Hooper and P Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit*, London: Hart Publishing, 95–114.
- Foster, S (2009) Reluctantly restoring rights: responding to the prisoners' right to vote. *Human Rights Law Review* 9(3), 489-507
- Gearty, C (2004) *Principles of Human Rights Adjudication*. Oxford: Oxford University Press
- Gearty, C (2015) On fantasy island: British politics, English judges and the European Convention on Human Rights. *European Human Rights Law Review* 1, 1-8
- Harris, D, O'Boyle, M and Warbrick, C (2014) *Law of the European Convention on Human Rights*, 3rd ed. Oxford: Oxford University Press.
- Hattenstone, S (2012) MPs' expenses scandal: what happened next? *The Guardian*, 11 May <https://www.theguardian.com/politics/2012/may/11/mps-expenses-scandal-what-next> (accessed 25 November 2016)
- Hooper, HJ (2015) The Use of Parliamentary Materials by Courts in Proportionality Judgments. In: Hunt, M, HJ Hooper and P Yowell (eds), *Parliaments and Human Rights: Redressing the Democratic Deficit*, London: Hart Publishing, 363–84.
- Horne, A and I White (2015) *Prisoners' voting rights (2005 to May 2015)*. House of Commons Library, SN/PC/01764
- House of Commons (2015) *Guide for Select Committee members*, April 2015
- House of Commons, Procedure Committee (2012) *Review of the Backbench Business Committee, second report of session 2012-13*, 7 November 2012, HC 168
- House of Commons, Justice Committee (2015) *Criminal courts charge, Second Report of Session 2015-2016* HC Paper 586, November 2015.

-
- House of Commons, Political and Constitutional Affairs Committee (2014) *A New Magna Carta? Second Report of Session 2014-15*, HC Paper 463, 10.7.2014
- House of Lords (2007) 'Relations between the executive, the judiciary and the Parliament: Report with evidence.' *Select Committee on the Constitution, 6th Report of Session 2006-07*, HL Paper 151, 26.7.2007
- House of Lords, European Union Committee (2016) *The UK, the EU and a British Bill of Rights*. 12th Report of Session 2015-16, 9 May 2016, HL Paper 139
- House of Lords, House of Commons, Joint Committee on the Draft Voting Eligibility (Prisoners) Bill (2013) *Draft voting eligibility (prisoners) bill, Report*. HL paper 103; HC 924, 18.12.2013.
- House of Lords, House of Commons, Joint Committee on Human Rights (2014) *The implications for access to justice of the Government's proposals to reform judicial review*, 13th Report, Session 2013-2014, HL Paper 174/ HC 868, 9.4.2014.
- House of Lords, House of Commons, Joint Committee on Human Rights (2015) *Human rights judgments: seventh report on session 2014-15, report together with formal minutes*, HL Paper 130, HC 1088, 11.3.2015.
- Hyde, J (2015) Society outrage at 'back door' criminal court fees. *The Law Society Gazette*, 27 March <http://www.lawgazette.co.uk/law/society-outrage-at-backdoor-criminal-court-fees/5047914.fullarticle> (accessed 25 November 2016)
- Jacobs, F, White, R and Ovey, C (2014) *The European Convention on Human Rights*, 6th Ed. Oxford: Oxford University Press.
- James, SB (2015) Reforms to judicial review proceedings become law. *Third Sector digital*, 17 February <http://www.thirdsector.co.uk/reforms-judicial-review-proceedings-become-law/policy-and-politics/article/1334166/> (accessed 25 November 2016)
- Judge, D (2004) Whatever happened to Parliamentary Democracy in the United Kingdom? *Parliamentary Affairs* 57(3), 682-701.
- Kelso, A (2009) Parliament on its knees: MP's expenses and the crisis of transparency at Westminster. *The Political Quarterly* 80(3), 329-338.
- Klug, F (2012) The Human Rights Act: origins and intentions. In Kang-Riou, N. Milner, J and Nayak, S (eds) *Confronting the Human Rights Act: contemporary themes and perspectives*. London: Routledge, 31-41.

-
- Klug, F (2003) Judicial deference under the Human Rights Act 1998. *European Human Rights Law Review* 2, 125-133
- Knight, C and T Cross (2015) Public law in the Supreme Court 2013-2014. *Judicial Review* 1, 1-25.
- Lardy, H (2002) Prisoner disenfranchisement: constitutional rights and wrongs. *Public Law, Autumn* 524-546
- Lazarus, L and N Simonsen (2015) Judicial review and parliamentary debate: enriching the doctrine of due deference. In: Hunt, M, HJ Hooper and P Yowell (eds) *Parliaments and human rights: redressing the democratic deficit* Oxford: Hart Publishing, 385-404
- Le Sueur, A (2004) Three strikes and it's out? The UK Government's strategy to oust judicial review from immigration and asylum decision making. *Public Law* Summer, 225-233
- McLean, I (2009) *What's wrong with the UK Constitution?* Oxford: Oxford University Press
- McNulty, D, N Watson and G Philo (2014) Human Rights and Prisoners' Rights: the British Press and the shaping of public debate. *The Howard Journal* 53(4), 360-376
- McQuigg, R (2014) *Bills of Rights: a comparative perspective*. Oxford: Intersentia
- Maer, L and O Gay (2009) The Royal Prerogative. *House of Commons Library*, SN/PC/03861, 30.12.2009
- Masterman, R (2009) Debate: Labour's 'juridification' of the Constitution. *Parliamentary Affairs* 62(3), 476-492
- Mead, D (2015) You couldn't make it up: some narratives of the media's coverage of human rights. In: Ziegler K et al (eds) *The UK and European Human Rights: a strained relationship?* Oxford: Hart Publishing, 453-472
- Meitl, MB, NL Piquero and AR Piquero (2017) Predicting the length of jury deliberations. *Journal of Crime and Justice* 40(2), 238-245
- Mentornmedia (2010) [Monthly archive, BBC Question Time: November] <http://www.mentorn.tv/news/2010/11/>
- Miller, V (1998) Protocol 11 and the new European Court of Human Rights. *House of Commons Library, Research Paper* 98/109, 4.12.1998.
- Ministry of Justice (2016) *The Story of the Prison Population 1993-2016, England and Wales*, July 2016, <https://www.gov.uk/government/statistics/story-of-the-prison-population-1993-to-2016> (accessed 25 November 2016)

-
- Ministry of Justice (2012) Voting eligibility (prisoners) draft bill, November 2012
- Ministry of Justice (2009) *Voting rights of convicted prisoners detained within the United Kingdom: second stage consultation*. Consultation paper CP6/09, published 8 April 2009
- Moffatt, R (2015) 2014 in immigration, citizenship and deportation. *Judicial Review* 20, 48-56.
- Murray, C (2013) A perfect storm: Parliament and prisoner disenfranchisement. *Parliamentary Affairs* 66, 511-539.
- Murray, C (2013b) Response to the Call for Evidence issued by the Joint Committee on the draft Voting Eligibility (Prisoners) Bill
- Murray, C (2011) Playing for time: prisoner disenfranchisement under the ECHR after *Hirst v United Kingdom*. *King's Law Journal* 22, 309-334
- Nicol, D (2002) Are Convention rights a no-go zone for Parliament? *Public Law*, 438-448
- Nicol, D (2006) Law and politics after the Human Rights Act. *Public Law*, 722-751
- Nicol, D (2011) Legitimacy of the Commons debate on prisoner voting. *Public Law*, 681-691
- Oliver, D (2013) Politics, Law and Constitutional moments in the UK. In Feldman D. (ed) *Law in Politics, Politics in Law*. Oxford: Hart Publishing, 239-256.
- PA (2011) 'Ex-MP 'used false invoices for cleaning work'' *The Independent* 2 February 2011
- Patrick, A (2014) Not in our name: Parliamentary committee rejects Government's case for Judicial Review reform. *UK Human Rights blog*, 30.4.2014
<https://ukhumanrightsblog.com/2014/04/30/not-in-our-name-parliamentary-committee-rejects-governments-case-for-judicial-review-reform-angela-patrick/>
(accessed 25 November 2016)
- Prisons and Probation Ombudsman Annual Report, 2017-18, https://s3-eu-west-2.amazonaws.com/ppo-prod-storage-1g9rkjhkhjmgw/uploads/2018/10/PPO_Annual-Report-2017-18_WEB_final.pdf
- Rozenberg, J (2015) Dramatic increases in court fees causing deep concern, say senior judges. *The Guardian*, 19 January,
<https://www.theguardian.com/law/2015/jan/19/dramatic-increases-court-fees-deep-concern-senior-judges> (accessed 25 November 2016)

Seamark, M ‘Former Labour MP ‘fiddled £9,000 using false invoices’ *The Daily Mail* 3 February 2011

Secretariat General of the Committee of Ministers (2010a), Communications from NGOs in the case of Hirst No.2 against the United Kingdom (*Application No. 74025/01*). DH-DD(2010)297E, Letter from the Prison Reform Trust to Michael Wills

Secretariat General of the Committee of Ministers (2010b) Communications from different NGOs (AIRE, UNLOCK, PRI, PRT) in the case of Hirst No. 2 against the United Kingdom (*Application No. 74025/01*), 01.12.2010 DH-DD(2010)609E

Secretariat General of the Committee of Ministers (2011a) 1108th meeting DH (8-10 March 2011) Communication from the government in the case of Hirst No.2 against the United Kingdom (*Application No. 74025/01*) 01.03.2011 DH-DD(2011)139

Secretariat General of the Committee of Ministers (2011b) Correspondence between United Kingdom authorities and the Registry of the European Court concerning the case of Greens and M.T. against the United Kingdom (*Applications No. 60041/08 and 60054/08*) DH - DD(2011)679E 1120th DH meeting (September 2011)

Secretariat General of the Committee of Ministers (2013) Communication from the United Kingdom concerning the case of Greens and M.T. against the United Kingdom (*Applications No. 60041/08 and 60054/08*) DH-DD(2013)680 1179 meeting (24-26 September 2013) (DH)

Secretariat General of the Committee of Ministers (2014) Communication from the United Kingdom concerning the case of Greens and M.T. against the United Kingdom (*Applications No. 60041/08 and 60054/08*) DH-DD(2014)289 1193 meeting (4-6 March 2014)

Secretariat General of the Committee of Ministers (2015a) Communication from the authorities (08/12/2014) concerning the cases of Hirst No. 2 and Greens and M.T. against the United Kingdom (*Applications No. 74025/01 and 60041/08*) DH-DD(2015)6 1222 meeting (10-12 March 2015) (DH)

Secretariat General of the Committee of Ministers (2015b) Communication from the authorities (20/07/2015) concerning the Hirst No. 2 and Greens & MT cases against the United Kingdom (*Applications No. 74025/01 and 60041/08*) DH-DD(2015)767 1236 meeting (22-24 September 2015) (DH)

-
- Secretariat General of the Committee of Ministers (2016) Communication from the authorities (05/02/2016) concerning the cases of Hirst No. 2 and Greens and M.T. against the United Kingdom (Applications No. 74025/01, 60041/08) DH-DD(2016)188 1250 meeting (8-10 March 2016) (DH)
- Secretariat General of the Committee of Ministers (2017) Communication from the United Kingdom concerning the case of Hirst (No. 2) v. the United Kingdom, 02/11/2017 DH-DD(2017)1229, Action Plan 1302nd meeting (December 2017) (DH)
- Select Committee on Home Affairs (1998), Minutes of evidence, Examination of Witnesses (Questions 520 - 539), 7.7.1998, George Howarth, Gay Catto and Steve Limpkin <https://publications.parliament.uk/pa/cm199798/cmselect/cmhaff/768/8070704.htm>
- Select Committee on Home Affairs (1998) [Fourth Report](#), Electoral law and administration, 10.9.1998, Section F the Franchise, <https://publications.parliament.uk/pa/cm199798/cmselect/cmhaff/768/76808.htm#n243>
- Sheridan, M (2013) Case comment: *Chester v Secretary of State for Justice; McGeoch v The Lord President of the Council & Anor* [2013] UKSC 63, *UK Supreme Court Blog*
- Simpson, F (2015) CJEU ruling on prisoner voting – open door for successful UK challenge? *UK Human Rights Blog*, 9 October <https://ukhumanrightsblog.com/2015/10/09/cjeu-ruling-on-prisoner-voting-open-door-for-successful-uk-challenge/> (accessed 25 November 2016)
- Stephenson, S (2015) The Supreme Court's renewed interest in autochthonous constitutionalism. *Public Law* July, 394-402.
- Straw, J (2012) *Last Man Standing: memoirs of a political survivor*, London: Macmillan
- Street, A (2013) *Judicial review and the rule of law: who is in control?* London: The Constitution Society, http://www.consoc.org.uk/wp-content/uploads/2013/12/J1446_Constitution_Society_Judicial_Review_WEB-22.pdf (accessed 25 November 2016)
- Sturge, G (2018) UK Prison Population statistics, House of Commons Briefing Paper, no. CBP-04334, 23 July 2018, <http://researchbriefings.files.parliament.uk/documents/SN04334/SN04334.pdf>
- Tickell, A (2014) Prisoner voting gambits: disappointment all round in Chester, McGeoch and Moohan. *Edinburgh Law Review* 18, 289-295

-
- Tomkins, A (2009) 'Constitutionalism' In M. Flinders et al. *The Oxford Handbook of British Politics*, Oxford: Oxford University Press, 239-259
- Travis, A (2014) House of Lords votes against Grayling's plans to restrict judicial review. *The Guardian*, 27 October, <https://www.theguardian.com/politics/2014/oct/27/house-of-lords-defeat-chris-grayling-judicial-review-plan> (accessed 25 November 2016)
- Vile, MJC (1998) *Constitutionalism and the separation of powers*, Liberty Fund
- Weaver, M and P Butler (2016) Ministers ditch anti-lobbying proposals for charities and universities *The Guardian*, 2 December, <https://www.theguardian.com/education/2016/dec/02/ministers-ditch-anti-lobbying-proposals-for-charities-and-universities> (accessed 21 February 2017)
- White, I (2013) *Prisoners Voting Rights*, House of Commons Library SN/PC/01764, 4 July
- Winnett, R and T Whitehead (2009) Prisoners to get right to vote after 140 years following European ruling. *The Telegraph*, 9 April <http://www.telegraph.co.uk/news/uknews/law-and-order/5126647/Prisoners-to-get-right-to-vote-after-140-years-following-European-ruling.html> (accessed 25 November 2016)
- Woodhouse, D (2002) The Law and politics: in the shadow of the Human Rights Act. *Parliamentary Affairs* 55, 254-270.
- Young, A (2009) *Parliamentary Sovereignty and the Human Rights Act*. Oxford: Hart Publishers
- Ziegler, R (2015) Voting eligibility: Strasbourg's timidity, In: Ziegler K et al (eds) *The UK and European Human Rights: a strained relationship?* Oxford: Hart Publishing, 165-192

Interviews

- Sir Peter Bottomley, Conservative MP for Worthing West (2015)
- Dr Susan Easton, Reader in Law, Brunel University (2015)
- Professor Sir Francis Jacobs, KCMG QC (Professor of Law, Kings College London; Advocate General, European Court of Justice (Luxembourg), 1988-2006 (2015)
- Tony Kelly, Solicitor, Taylor & Kelly, Coatbridge (2015)
- Dr Denis MacShane, former Minister for Europe, member of the Parliamentary Assembly of the Council of Europe 2006-2010, former Labour MP for Rotherham (2015)

Hywel Williams, Plaid Cymru MP for Arfon (2015)

Unattributed interviews

1. Member of the Secretariat, Parliamentary Assembly of the Council of Europe (2012)
2. Stakeholder (2015)
3. Parliamentarian (2015)
4. Stakeholder (2015)
5. Member of the Secretariat of the Parliamentary Assembly, Council of Europe (2012)
6. Stakeholder (2017)
7. Stakeholder (2015)

Archival documents, UK National Archives, Kew

Foreign and Commonwealth Office, FCO 41/91, *Council of Europe, UK Implementation of European Convention on Human Rights*, 1967-1968

Foreign and Commonwealth Office, FCO 33/3312, *European Convention on Human Rights: proposed Bill of Rights in UK; with report on practice of European Countries*, 01.01.-31.12.1977

Foreign and Commonwealth Office, FCO 30/2455, *UK Parliamentary Sovereignty and EEC*, 1974

HM Treasury, T440/9, *A Bill of Rights: possible incorporation of European Convention on Human Rights into UK law*, 1981

Home Office, HO 273/28, *Council of Europe: European Convention on Human Rights: renewal of optional clauses*, 1985-1991.

Prime Minister's Office, PREM 16/1294, *Human Rights Legislation: incorporation of European Convention into UK domestic law, part 2*, 1976-1977

Prime Minister's Office, PREM 19/1756, *European Convention on Human Rights (ECHR): impact of European Court of Human Rights findings on UK domestic law, part 1*, 12.11.1980-15.5.1986

Prime Minister's Office, PREM 19/2295, *Legal Procedure: challenges to the Department of Health and Social Security (DHSS) and other departments; Judicial Review, Part 1*, 1985-1987

Cases

Court of Justice of the European Union

Thierry Delvigne v Commune de Lesparre-Medoc [October 2015] EUEC C-650/13

European Court of Human Rights:

Hirst v UK No.2, No. 74025/01, 30.3.2004

Hirst v UK No.2 [GC], No. 74025/01, 6.10.2005

Greens and M.T. v UK, Nos. 60041/08 and 60054/08, 23.11.2010

Scoppola v Italy No.3, No. 126/05, 22.5.2012

Scotland, Court of Session:

Smith v Scott SC 345 2007

UK Divisional Court

R (Pearson, Martinez and Hirst) v the Secretary of State for the Home Department and the Attorney General [2001] EWHC Admin 239

UK High Court

R (Miller and Santos) v Secretary of State for Exiting the European Union CO/3281/2016, CO/3809/2016

UK Supreme Court:

R (Chester) v Secretary of State for Justice & McGeoch v The Lord President of the Council and another (Scotland) [2013] UKSC 63 [2010] EWCA Civ 1439; [2011] CSIH 67, 16.10.2013

R v Chaytor and others [2010] UKSC 52 [2010] EWCA Crim 1910

R (Miller and another) v Secretary of State for Exiting the European Union [2016] UKSC 2016/0196, 24.1.2017